

SENATE BILL No. 352

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5; IC 3-10-1-16; IC 33-33-49.

Synopsis: Marion superior court. Establishes the Marion County judicial selection committee to appoint and nominate judges for the Marion superior court. Provides that judges of the Marion superior court: (1) will be initially appointed by the Marion County judicial selection committee; and (2) may be retained in office thereafter by vote of the electorate.

Effective: January 1, 2017.

**Young R Michael, Waltz, Taylor,
Merritt, Miller Patricia**

January 7, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 352

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-1.2-1, AS AMENDED BY P.L.53-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2017]: Sec. 1. (a) Except as provided in subsection (b)
4 or otherwise in this article, this chapter applies to all committees
5 established under this article.

6 (b) This chapter does not apply to the following:

7 (1) The legislative council (IC 2-5-1.1).

8 (2) The youth advisory council (IC 2-5-29).

9 (3) The commission on improving the status of children in
10 Indiana (IC 2-5-36).

11 **(4) The Marion County judicial selection committee**
12 **(IC 2-5-40).**

13 SECTION 2. IC 2-5-40 IS ADDED TO THE INDIANA CODE AS
14 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
15 JANUARY 1, 2017]:

16 **Chapter 40. Marion County Judicial Selection Committee**

17 **Sec. 1. As used in this chapter, "committee" refers to the**



1 Marion County judicial selection committee established by section
2 of this chapter.

3 Sec. 2. The Marion County judicial selection committee is
4 established to select judges and judicial nominees for the court.

5 Sec. 3. (a) The committee consists of the following sixteen (16)
6 members:

7 (1) Eight (8) members of the general assembly having a
8 legislative district that includes part of Marion County,
9 appointed as follows:

10 (A) Two (2) members appointed by the speaker of the
11 house of representatives.

12 (B) Two (2) members appointed by the minority leader of
13 the house of representatives.

14 (C) Two (2) members appointed by the president pro
15 tempore of the senate.

16 (D) Two (2) members appointed by the minority leader of
17 the senate.

18 (2) The president of the Indianapolis bar association or the
19 president's designee.

20 (3) The president of the Marion County bar association or the
21 president's designee.

22 (4) Three (3) members appointed by the chairperson of each
23 major political party (as defined by IC 3-5-2-30(2)) in Marion
24 County.

25 (b) Each member described in subsection (a)(2) through (a)(4)
26 must reside in Marion County.

27 (c) If a member of the committee is employed by a law firm, no
28 other person employed by the same law firm may be appointed to
29 the committee.

30 Sec. 4. (a) The chairperson serves a two (2) year term and shall
31 be selected by:

32 (1) the president pro tempore of the senate for the term that
33 begins on January 1, 2017, and every four (4) years
34 thereafter; and

35 (2) the speaker of the house of representatives, for the term
36 that begins on January 1, 2019, and every four (4) years
37 thereafter.

38 (b) The vice-chairperson serves a two (2) year term and shall be
39 selected by:

40 (1) the speaker of the house of representatives for the term
41 that begins on January 1, 2017, and every four (4) years
42 thereafter; and



(2) the president pro tempore of the senate, for the term that begins on January 1, 2019, and every four (4) years thereafter.

(c) After selection of the chairperson and vice-chairperson, the committee shall select two (2) members of the committee who are not members of the general assembly to serve as the:

(1) reporting secretary; and

(2) at-large member of the executive committee.

(d) The chairperson, vice-chairperson, reporting secretary, and at-large member of the executive committee constitute the executive committee of the committee. Not more than two (2) members of the executive committee may be members of the same political party.

Sec. 5. (a) A member of the committee may be removed at any time by the appointing authority who appointed the member.

(b) If a vacancy exists on the committee, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

(c) An ex officio member of the committee ceases to be a member of the committee at the time the person no longer holds the office that entitles the person to be a member of the committee.

(d) A member of the general assembly who ceases to be a member of the general assembly with a legislative district that includes part of Marion County is considered to have resigned from the committee.

(e) A member of the committee described in section 3(a)(2) through 3(a)(4) of this chapter who no longer resides in Marion County is considered to have resigned from the committee.

Sec. 6. Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.

Sec. 7. (a) A quorum consists of nine (9) members of the committee.

(b) The affirmative votes of eleven (11) members of the committee are required for the committee to take official action with respect to any candidate for judicial office. However, the affirmative votes of nine (9) members of the committee are sufficient to select committee officers, approve rules and operating procedures, and decide other matters relating to the internal operation of the committee.

Sec. 8. The committee shall appoint and nominate judicial



1 candidates for the Marion superior court in accordance with
2 IC 33-33-49-13.2.

3 Sec. 9. (a) The committee meets upon call of the chairperson.

4 (b) The committee shall meet in the statehouse, or in any other
5 appropriate location in Marion County, as determined by the
6 chairperson.

7 Sec. 10. The committee may adopt its own policies and operating
8 procedures.

9 Sec. 11. No former member of the committee may be appointed
10 or nominated as a judge of the Marion superior court if the person
11 has served as a member of the committee within the previous two
12 (2) years.

13 SECTION 3. IC 3-10-1-16 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 16. At a primary
15 election a voter may vote for as many candidates for each office as
16 there are persons to be elected to that office at the general election.
17 ~~except as provided in IC 33-33-49-13 for candidates for judge of the~~
18 ~~Marion superior court.~~

19 SECTION 4. IC 33-33-49-6, AS AMENDED BY P.L.80-2006,
20 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JANUARY 1, 2017]: Sec. 6. (a) There is established a superior court
22 in Marion County. The court consists of:

23 (1) thirty-five (35) judges beginning January 1, 2007, and ending
24 December 31, 2008; and

25 (2) thirty-six (36) judges beginning January 1, 2009.

26 (b) To be qualified to serve as a judge of the court, a person must
27 be, at the time a ~~declaration of candidacy or a petition of nomination~~
28 ~~under IC 3-8-6 is filed the person applies to fill an open judicial~~
29 ~~office, a vacancy, or files for retention:~~

30 (1) a resident of Marion County; and

31 (2) an attorney who has been admitted to the bar of Indiana for at
32 least five (5) years.

33 (c) During the term of office, a judge of the court must remain a
34 resident of Marion County.

35 SECTION 5. IC 33-33-49-13 IS REPEALED [EFFECTIVE
36 JANUARY 1, 2017]. ~~Sec. 13: (a) Each judge of the court shall be~~
37 ~~elected for a term of six (6) years that begins January 1 after the year~~
38 ~~of the judge's election and continues through December 31 in the sixth~~
39 ~~year. The judge shall hold office for the six (6) year term or until the~~
40 ~~judge's successor is elected and qualified. A candidate for judge shall~~
41 ~~run at large for the office of judge of the court and not as a candidate~~
42 ~~for judge of a particular room or division of the court.~~



(b) At the primary election held in 2008 and every six (6) years thereafter, a political party may nominate not more than eight (8) candidates for judge of the court. At the primary election held in 2006 and every six (6) years thereafter, a political party may nominate not more than ten (10) candidates for judge of the court. The candidates shall be voted on at the general election. Other candidates may qualify under IC 3-8-6 to be voted on at the general election.

(c) The names of the party candidates nominated and properly certified to the Marion County election board, along with the names of other candidates who have qualified, shall be placed on the ballot at the general election in the form prescribed by IC 3-11. At the 2008 general election and every six (6) years thereafter, persons eligible to vote at the general election may vote for sixteen (16) candidates for judge of the court. Beginning with the 2006 general election and every six (6) years thereafter, persons eligible to vote at the general election may vote for twenty (20) candidates for judge of the court.

(d) The candidates for judge of the court receiving the highest number of votes shall be elected to the vacancies. The names of the candidates elected as judges of the court shall be certified to the county election board as provided by law.

SECTION 6. IC 33-33-49-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 13.1. (a) Except for the transitional period described in subsection (h), each judge of the court shall serve a term of six (6) years. The judge shall hold office for the six (6) year term or until the judge's successor is appointed and qualified. A judge shall be appointed at large for the office of judge of the court and not as the judge of a particular room or division of the court.**

(b) The thirty-six (36) judges of the court shall be divided into three (3) retention classes. Each retention class consists of twelve (12) judges.

(c) Retention class A consists of twelve (12) of the sixteen (16) judges:

(1) whose terms expire on December 31, 2018; and

(2) who have the most seniority as judges.

If two (2) or more judges have equal seniority such that the assignment of only twelve (12) judges to retention class A cannot be done, those judges having the highest bar number (not including the county identifier) have the highest seniority.

(d) Retention class B consists of:

(1) eight (8) of the twenty (20) judges having the most



seniority as judges whose terms expire on December 31, 2020;

and

(2) the four (4) judges not assigned to retention class A whose terms would have expired on December 31, 2018.

If two (2) or more judges have equal seniority such that the assignment of only eight (8) judges described in subdivision (1) to retention class B cannot be done, those judges having the highest bar number (not including the county identifier) have the highest seniority.

(e) Retention class C consists of the twelve (12) judges:

(1) whose terms would have otherwise expired on December 31, 2020; and

(2) who are not assigned to retention class B.

(f) Except as provided in section 13.4 of this chapter, the term of a judge assigned to:

(1) retention class A begins on January 1, 2019, and every six (6) years thereafter, and continues through December 31, 2025, and every six (6) years thereafter;

(2) retention class B begins on January 1, 2021, and every six (6) years thereafter, and continues through December 31, 2027, and every six (6) years thereafter; and

(3) retention class C begins on January 1, 2023, and every six (6) years thereafter, and continues through December 31, 2029, and every six (6) years thereafter.

(g) A newly appointed judge is assigned the retention class of the judge's predecessor.

(h) Notwithstanding any other law, the term of a judge described in:

(1) subsection (d)(2) expires on December 31, 2020; and

(2) subsection (e) expires on December 31, 2022.

This subsection expires on January 1, 2023.

SECTION 7. IC 33-33-49-13.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 13.2. (a) A sitting judge of the court shall be approved or rejected by the electorate of Marion County in accordance with this section.**

(b) A judge who wishes to be retained in office shall file a statement with the clerk, not later than noon July 15 of the year in which the judge's term expires, indicating that the judge wishes to have the question of the judge's retention placed on the ballot. The judge's statement must include a statement of the judge's name as:

(1) the judge wants the judge's name to appear on the ballot;



and

(2) the candidate's name is permitted to appear on the ballot under IC 3-5-7.

(c) This subsection applies to a judge:

(1) who does not file a statement under subsection (b); and

(2) whose term expires during the year in which the question of the retention of the judge would have been placed on the general election ballot.

The term of a judge expires December 31 of the year in which the question of the judge's retention would have been placed on the ballot.

(d) This section applies to a judge:

(1) who files a statement under subsection (b); and

(2) whose retention is rejected by the electorate.

The term of a judge whose retention is rejected by the electorate ends when the judge's term expires. However, if the judge has filed a petition for a recount under IC 3-12-6, the term of the judge does not end until the recount commission has issued a certificate under IC 3-12-6-22 stating that the electorate has rejected the retention of the judge.

(e) The question of approval or rejection of a judge shall be placed on the general election ballot in the form prescribed by IC 3-11 and must state "Shall Judge (insert name (as permitted under IC 3-5-7) here) be retained in office?". If a majority of the ballots cast by the electors voting on the question is "Yes", the judge whose name appeared on the question shall be approved for a six (6) year term beginning January 1 following the general election as provided in section 13.1 of this chapter. If a majority of the ballots cast by the electors voting on the question is not "Yes", the judge whose name appeared on the question is rejected. The office of the rejected judge becomes an open judicial seat on January 1 following the rejection. The open judicial seat shall be filled by appointment by the committee under section 13.3 of this chapter.

(f) The statement filed under subsection (b) must include a statement that the judge requests the name on the judge's voter registration record be the same as the name the judge uses on the statement. If there is a difference between the name on the judge's statement and the name on the judge's voter registration record, the clerk shall change the name on the judge's voter registration record to be the same as the name on the judge's statement.

(g) If a judge does not file a statement under subsection (b), the



1 clerk shall, before July 20, notify the Marion County judicial
 2 selection committee in writing that the judge does not wish to have
 3 the question of the judge's retention placed on the ballot.

4 SECTION 8. IC 33-33-49-13.3 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JANUARY 1, 2017]: Sec. 13.3. (a) The following
 7 definitions apply throughout this section:

8 (1) "Committee" means the Marion County judicial selection
 9 committee established by IC 2-5-40-2.

10 (2) "Open judicial seat" means a judicial office which cannot
 11 be filled by a sitting judge because:

12 (A) the sitting judge:

13 (i) is retiring after completing the judge's term;

14 (ii) has lost a retention election; or

15 (iii) is otherwise leaving office after completing the
 16 judge's full term; or

17 (B) a new court has been created.

18 (3) "Vacancy" refers to an unfilled judicial office that is
 19 created because a judge leaves office before the judge's term
 20 has expired.

21 (b) When the committee learns that an open judicial seat exists
 22 or will exist in the court, the committee shall appoint a judge to fill
 23 the open judicial seat in accordance with subsection (e).

24 (c) When the committee learns that a vacancy exists or will exist
 25 in the court, the committee shall nominate two (2) candidates for
 26 appointment by the governor, in accordance with subsection (f).

27 (d) In making an appointment or nomination under this section
 28 or under section 13.4 of this chapter, the committee shall consider
 29 the following factors with respect to a candidate:

30 (1) Law school record, including any academic honors and
 31 achievements.

32 (2) Contribution to scholarly journals and publications,
 33 legislative drafting, and legal briefs.

34 (3) Activities in public service, including:

35 (A) writings and speeches concerning public or civic affairs
 36 which are on public record, including but not limited to
 37 campaign speeches or writing, letters to newspapers, and
 38 testimony before public agencies;

39 (B) efforts and achievements in improving the
 40 administration of justice; and

41 (C) other conduct relating to the individual's profession.

42 (4) Whether the candidate reflects the diversity and makeup



1 of Marion County.

2 (5) Legal experience, including the number of years of
3 practicing law, the kind of practice involved, and reputation
4 as a trial lawyer or judge.

5 (6) Probable judicial temperament.

6 (7) Physical condition, including age, stamina, and possible
7 substance abuse issues.

8 (8) Personality traits, including the exercise of sound
9 judgment, ability to compromise and conciliate patience,
10 decisiveness, and dedication.

11 (9) Membership on boards of directors, financial interest, and
12 any other consideration that might create conflict of interest
13 with a judicial office.

14 (10) Any other pertinent information that the committee feels
15 is important in selecting the best qualified individuals for
16 judicial office.

17 (e) This subsection applies only to an open judicial seat. As soon
18 as practicable after the committee learns of an open judicial seat,
19 the committee shall publicly announce that it is accepting
20 applications from qualified persons wishing to fill the open judicial
21 seat. The committee shall determine the form and content of the
22 application, establish a timetable for the appointment of the new
23 judge, and schedule one (1) or more hearings to interview qualified
24 applicants and select the individual who will be appointed as judge.
25 To the extent practicable, the committee shall endeavor to
26 interview as many qualified applicants as possible. However, if a
27 large number of applicants have applied for an open judicial seat,
28 the committee may limit itself to interviewing only the most
29 qualified applicants. The committee may conduct multiple
30 interviews. At the conclusion of the interview process, the
31 committee shall appoint the most qualified applicant as judge. The
32 judge serves a term as described in section 13.1 of this chapter and
33 may serve additional continuous terms as long as the judge is
34 retained in office by the electorate.

35 (f) This subsection applies only to a vacancy. As soon as
36 practicable after the committee learns of a vacancy, the committee
37 shall publicly announce that it is accepting applications from
38 persons wishing to fill the vacancy. The committee shall determine
39 the form and content of the application, establish a timetable for
40 nominations, and schedule one (1) or more hearings to interview
41 qualified applicants and select nominees to fill the vacancy. To the
42 extent practicable, the committee shall endeavor to interview as



1 many qualified applicants as possible. However, if a large number
 2 of applicants have applied to fill a vacancy, the committee may
 3 limit itself to interviewing only the most qualified applicants. The
 4 committee may conduct multiple interviews. At the conclusion of
 5 the interview process, the committee shall nominate the two (2)
 6 most qualified candidates and forward their names to the
 7 governor, who shall appoint one (1) of the nominees as judge. The
 8 judge appointed by the governor under this subsection serves only
 9 until the term of his or her predecessor in office expires and is not
 10 eligible to stand for retention at the end of the term. When the term
 11 expires, the seat becomes an open judicial seat and shall be filled by
 12 the committee in accordance with subsection (e).

13 (g) If the governor does not appoint a nominee within thirty (30)
 14 days from the date the governor receives the names of the
 15 nominees from the committee, the committee shall appoint one (1)
 16 of the nominees to serve as judge. A nominee appointed under this
 17 subsection serves only until the term of the nominee's predecessor
 18 expires, as in the case of a nominee appointed by the governor
 19 under subsection (f).

20 SECTION 9. IC 33-33-49-13.4 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JANUARY 1, 2017]: Sec. 13.4. (a) This subsection
 23 applies only to a section 13 judge.

24 (b) As used in this subsection, "section 13 judge" means a judge
 25 who:

- 26 (1) served as a judge of the Marion superior court on
- 27 December 31, 2016;
- 28 (2) has filed a statement under section 13.2 of this chapter that
- 29 the judge wishes to be retained in office; and
- 30 (3) has not previously been confirmed as qualified by the
- 31 committee under subsection (f).

32 (c) Before a section 13 judge may stand for retention under
 33 section 13.2 of this chapter, the committee must confirm the judge
 34 as qualified to stand for retention under subsection (f).

35 (d) At the time a section 13 judge files a statement under section
 36 13.2 of this chapter that the judge wishes to be retained in office,
 37 the judge shall:

- 38 (1) notify the committee that the judge wishes to be retained
- 39 in office; and
- 40 (2) provide the committee with a written statement describing
- 41 the judge's qualifications, with particular emphasis on the
- 42 matters described in section 13.3(d) of this chapter.



1 (e) After receiving the materials described in subsection (d), the
2 committee shall promptly schedule a public hearing to consider the
3 materials submitted by the section 13 judge and interview the
4 judge. Each section 13 judge is entitled to a hearing before the
5 committee.

6 (f) The affirmative votes of at least eleven (11) members of the
7 committee are required to find that a section 13 judge is qualified.
8 A section 13 judge who is qualified is entitled to stand for retention.
9 A section 13 judge who is not found to be qualified is not entitled
10 to stand for retention, and the committee shall appoint a successor
11 in accordance with section 13.3(e) of this chapter.

12 (g) The committee may adopt policies and operating procedures
13 to implement this section.

14 (h) This section expires January 1, 2023.

